

CIVIL COVER SHEET

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JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

VILMA SERRALTA

DEFENDANTS

SAKHAWAT M. KHAN; ROOMY KHAN; DOES ONE through TEN, inclusive

(b) County of Residence of First Listed Plaintiff San Mateo County
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Christina Chung, Matthew Goldberg, Carole Vigne, Christopher Ho, Legal Aid Society - Employment Law Ctr., 600 Harrison St., Ste. 120, San Francisco CA 94107, 415.864.8848; Hillary Ronen, Rocio Avila, La Raza Centro Legal, 474 Valencia St., Ste. 295, San Francisco CA, 415.575.3500

Elizabeth Tippet, Wilson, Sonsini, Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304, 650.493.9300

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act of 1938, 29 U.S.C. section 201 et seq.

Brief description of cause:

Action to recover unpaid minimum and overtime wages, and penalties for state labor law violations.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ To be determined

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

March 13, 2008

SIGNATURE OF ATTORNEY OF RECORD

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VILMA SERRALTA,

Plaintiff,

v.

SAKHAWAT KHAN; ROOMY KHAN; and
 DOES ONE through TEN, inclusive,

Defendants.

Case No.: **CV 08 1427**
**COMPLAINT FOR DECLARATORY
 RELIEF AND DAMAGES FOR
 VIOLATIONS OF THE FAIR LABOR
 STANDARDS ACT AND CALIFORNIA
 LABOR CODE; AND UNFAIR AND
 UNLAWFUL BUSINESS PRACTICES**
[DEMAND FOR JURY TRIAL]

EDL

Plaintiff VILMA SERRALTA complains of Defendants and demands a trial by jury of all issues, and for all causes of action alleges as follows:

INTRODUCTION

1
2 1. For nearly 70 years, the federal Fair Labor Standards Act ("FLSA") has provided
3 minimum labor protections to employees from substandard working conditions, including the failure
4 to pay proper compensation for all hours worked. This action brought by a domestic worker arises
5 out of Defendants' pervasive practice of depriving Plaintiff of her most basic rights and protections
6 guaranteed under the FLSA and, by cognate, rights provided by state labor law.

7 2. For over four years, Defendants routinely denied Plaintiff her lawful wages for the
8 long hours that she worked to clean and maintain their 9,000-square foot residence, to provide
9 childcare, and to otherwise serve Defendants at their beck and call. Behind closed doors, Defendants
10 benefited from Plaintiff's labor and their illegal conduct, concealed in part through their failure to
11 keep accurate employment records mandated by law.

12 3. By this action, Plaintiff seeks declaratory relief and damages to remedy Defendants'
13 violations of federal and state labor laws and commission of unlawful and unfair business acts and
14 practices.

JURISDICTION AND VENUE

15
16 4. Jurisdiction is conferred on this Court by Section 16(b) of the Fair Labor Standards
17 Act of 1938 ("FLSA"), 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337. Supplemental
18 jurisdiction over Plaintiff's claims under California law is conferred by 28 U.S.C. § 1367. Pursuant
19 to Civil Local Rule 3-2(d), venue is proper in the Northern District of California because Plaintiff
20 resides in this District, Defendants reside in and employed Plaintiff in this District, and because a
21 substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District.

PARTIES

22
23 5. Plaintiff VILMA SERRALTA is 69 years old and is a resident of San Mateo County,
24 California. At all relevant times herein, Plaintiff was employed as a domestic worker by Defendants
25 SAKHAWAT KHAN and ROOMY KHAN in San Mateo County, California. Plaintiff's written
26 consent to become a party to this action is attached hereto pursuant to 29 U.S.C. § 216(b).

27 6. Defendant SAKHAWAT KHAN, husband of Defendant ROOMY KHAN, is and was
28

1 at all times relevant herein an individual residing and doing business as Plaintiff's employer in San
2 Mateo County, California. At all times relevant herein, Defendant SAKHAWAT KHAN was an
3 employer within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d), and California Industrial
4 Welfare Commission Wage Order 15-2001 ("IWC Wage Order") § 2(G), codified at 8 Cal. Code
5 Regs. § 11150, in that he directly or indirectly employed or exercised control over Plaintiff's wages,
6 hours, or working conditions.

7 7. Defendant ROOMY KHAN, wife of Defendant SAKHAWAT KHAN, is and was at
8 all times relevant herein an individual residing and doing business as Plaintiff's employer in San
9 Mateo County, California. At all times relevant herein, Defendant ROOMY KHAN was an
10 employer within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d), and the IWC Wage Order §
11 2(G) in that she directly or indirectly employed or exercised control over Plaintiff's wages, hours, or
12 working conditions.

13 8. Plaintiff is informed and believes and on that basis alleges that Defendants DOES
14 ONE through TEN are in some capacity responsible for the violations of law complained of herein.
15 Plaintiff, however, is ignorant of the true names and capacities of Defendants sued herein as DOES
16 ONE through TEN, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend
17 this complaint to allege their true names and capacities when ascertained.

18 9. Plaintiff is informed and believes and thereupon alleges that at all times material
19 herein, each Defendant was the agent, representative, and alter ego of the other Defendants, and
20 acted with the knowledge, authority, consent, and ratification of the other Defendants, and all aided
21 and abetted the wrongful acts of the others.

22 10. Wherever this Complaint refers to any act by a Defendant or Defendants, such
23 allegations and references shall also be deemed to mean the acts and failures to act of each
24 Defendant acting individually, jointly, and/or severally.

25 11. Plaintiff is informed and believes and on that basis alleges that at all material times,
26 each of the Defendants has acted as her employer and/or joint employer within the meaning of the
27 FLSA and California law.
28

12. Plaintiff is informed and believes and on that basis alleges that at all times material herein, each of the Defendants was the agent, employee, and/or joint venturer of, or working in concert with, each other and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and/or omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and on that basis alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and/or omissions.

13. Wherever reference is made to individuals who are not named as Defendants in this Complaint but are or were employees/agents of Defendants, or any of them, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

FACTUAL ALLEGATIONS

14. Between on or about July 8, 2002 and September 11, 2006, Plaintiff was employed by Defendants as a domestic worker living in their private residence.

15. At all times relevant herein, Defendants were employers within the meaning of the FLSA and the IWC Wage Order in that they directly or indirectly employed or exercised control over the wages, hours, and working conditions of Plaintiff. Defendants further controlled the manner and means by which the Plaintiff accomplished her work for Defendants.

16. At all times relevant herein, Defendants resided and employed Plaintiff in their residence located at 168 Isabella Avenue, Atherton, California 94207.

17. Defendants' residence, which is currently listed for sale, has been priced at over \$17 million and described in an online listing (<http://www.redfin.com/stingray/do/printable-listing?listing-id=193393>) as, *inter alia*, having six bedrooms, four bathrooms, and a separate one-bedroom, two-bathroom guesthouse, and encompassing over 9,000 square feet on a 1.81-acre lot.

18. As a live-in domestic worker for Defendants, the vast majority of Plaintiff's work hours involved cleaning Defendants' sizable residence. On either a daily basis or multiple times per week, Plaintiff was typically required to: make Defendants' beds; tidy the bedrooms; clean multiple bathrooms, which regularly involved washing showers, tubs, and sinks, wiping the counters and the

1 mirrors, and scrubbing the floors; clean the kitchens in the primary residence and the guesthouse,
2 which regularly included clearing and washing dirty cups, dishes, pots and pans, wiping the counters
3 and various appliances, and restocking the refrigerator; tidy the other rooms, including the family
4 room, the living room, and the dining room; set and clear the table at meals; throw out the garbage;
5 dust furniture; vacuum and/or mop the floors; launder and iron Defendants' clothes; organize and
6 clean cupboards and closets; and engage in other general housecleaning duties. Moreover, Plaintiff
7 was also required to clean the windows, both interior and exterior, of the residence; clean the private
8 patio and the outdoor barbecue; and set up for parties.

9 19. In addition to her significant housecleaning duties, Plaintiff was typically required to
10 cook and/or assist in meal preparation; to serve breakfast, lunch, and dinner; and to attend to
11 Defendants and their guests, who frequently visited the house.

12 20. Though most of Plaintiff's work hours were devoted to these demanding household
13 duties, she was also expected to provide child care for Defendants' young child, including waking
14 her early in the morning to get her ready for school; bathing and clothing her; preparing her meals;
15 feeding her; playing with her and/or supervising her; and putting her to bed at night.

16 21. Defendants typically required Plaintiff to work more than 14 hours per day on
17 weekdays and up to 26 hours or more over the course of a weekend.

18 22. During a typical two-week pay period, Defendants regularly required Plaintiff to work
19 13 days out of 14.

20 23. Throughout her employment with Defendants, Plaintiff was frequently required to
21 work late into the night on weekend evenings, often past midnight, when Defendants threw elaborate
22 dinner parties for large numbers of guests. Plaintiff typically worked more than 16 hours per day on
23 these occasions. Not only was Plaintiff required to prepare for these dinner parties and serve party
24 guests, she was required to clean up afterwards, including meticulously hand-washing Defendants'
25 silverware and dinner plates.

26 24. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage of
27 \$1,100.00, then \$1,300.00, and then \$1,000.00, regardless of the number of hours she actually
28

1 worked. These fixed wages failed to compensate Plaintiff for all the hours she worked, including all
2 her overtime and double time hours as required by law.

3 25. Plaintiff and Defendants did not enter into a voluntary written agreement to credit
4 Plaintiff's lodging or meals against the minimum wage.

5 26. Defendants willfully and intentionally denied Plaintiff all the wages she was entitled
6 to under the law.

7 27. At all times relevant herein, Defendants routinely failed to provide Plaintiff with a
8 ten-minute net rest period for every four hours of work or major fraction thereof, as required by law.

9 28. At all times relevant herein, Defendants routinely required Plaintiff to work more than
10 ten hours per day without providing her with two meal periods of not less than thirty minutes, as
11 required by law.

12 29. Defendants routinely failed to keep accurate records as required by law that indicated
13 when Plaintiff began and ended each work period, her meal periods, her total daily hours worked, her
14 total hours worked in the payroll period, and applicable rates of pay.

15 30. Moreover, Defendants routinely failed to furnish Plaintiff with accurate itemized
16 wage statements at the time of each payment of wages, showing her total hours worked, all
17 applicable hourly rates in effect during the pay period, and the corresponding number of hours
18 worked at each hourly rate, as required by law. As part of Defendants' failure to provide Plaintiff
19 with the foregoing information, Plaintiff was not paid according to the law and was hindered in
20 determining the amount of wages actually owed to her by Defendants and in challenging her rate of
21 pay.

22 31. In addition to Defendants' deprivation of Plaintiff's basic labor rights, Defendants
23 regularly yelled at Plaintiff and subjected Plaintiff to verbal abuse, such as shouting derogatory
24 comments at her.

25 32. Defendants terminated Plaintiff's employment on or about September 11, 2006.

26 33. Plaintiff did not receive final payment of all accrued wages and compensation due her
27 immediately upon termination, as required by law.

1 34. Plaintiff has demanded that Defendants pay her the wages and attendant penalties and
2 damages she is owed. Defendants have refused these demands.

3 35. Defendants' conduct as described herein is a form of unfair competition against other
4 employers who operate in compliance with the law. Defendants' pattern and practice of unlawful
5 and unfair employment practices has injured Plaintiff and the general public. Defendants have
6 benefited from and been unjustly enriched by their unlawful and unfair acts.

7 36. On or about August 2, 2007, Plaintiff filed an administrative wage claim with the
8 California Division of Labor Standards Enforcement ("DLSE"), the state agency charged with
9 enforcing California's labor laws.

10 37. Subsequently, the parties entered into a "Structured Negotiations Agreement"
11 ("Tolling Agreement") that tolled the statutes of limitation with respect to any and all federal and
12 state law claims that Plaintiff could assert against Defendants, as of August 14, 2007, for the
13 purposes of facilitating settlement discussions.

14 38. On February 12, 2008, Defendants provided Plaintiff with written notice by certified
15 mail of their intent to terminate settlement discussions and the Tolling Agreement.

16 39. Pursuant to the terms of the Tolling Agreement, the running of any applicable statutes
17 of limitation with respect to Plaintiff's claims as alleged herein were tolled between August 14, 2007
18 and March 13, 2008.

19 40. Additionally, pursuant to the doctrine of equitable tolling, any applicable statutes of
20 limitation with respect to Plaintiff's claims under the California Labor Code ("Labor Code") have
21 been tolled since she filed her administrative wage claim with DLSE. Plaintiff provided timely
22 notice to the Defendants when she filed her DLSE claim alleging wage and hour violations under the
23 Labor Code; Defendants have not been prejudiced because the filing of the DLSE claim alerted
24 Defendants to the Labor Code violations alleged in the instant action; and Plaintiff acted reasonably
25 and in good faith when she awaited the outcome of settlement discussions prior to filing the instant
26 action.

27 41. Furthermore, Defendants failed to post and make available to Plaintiff the notice of
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rights pursuant to the FLSA as required under 29 C.F.R. § 516.4, and of California wage and hour laws as required under § 21 of the IWC Wage Order. As a result, Plaintiff was unaware of her actual rights under the law and unable to seek appropriate remedies, including the filing of a lawsuit, throughout her employment with Defendants. Any statutes of limitation relating to Plaintiff's FLSA and Labor Code claims were therefore suspended for the period of Plaintiff's employment with Defendants and for a reasonable time period following the termination of her employment.

FIRST CLAIM FOR RELIEF

[Failure to Pay Minimum Wage – FLSA, California Labor Code, and IWC Wage Order]

42. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 41, inclusive, as though fully set forth herein.

43. The FLSA, Labor Code, and the IWC Wage Order applied to Plaintiff's employment with Defendants at all times relevant herein.

44. Section 6 of the FLSA, 29 U.S.C. § 206, mandates that employers pay all employees engaged in commerce or in the production of goods for commerce not less than \$5.15 per hour, effective September 1, 1997.

45. Labor Code § 1197 and the IWC Wage Order § 4 mandate that an employer shall pay all employees the minimum wage of \$6.75 per hour.

46. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage that failed to pay Plaintiff the minimum wage for all her hours worked, in violation of the FLSA, the Labor Code, and the IWC Wage Order.

47. Pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b), and Labor Code § 1194(a) and 1194.2(a), Plaintiff is entitled to recover her unpaid minimum wages, including interest and liquidated damages thereon, in amounts to be proven at trial.

48. Under § 16(b) of the FLSA, 29 U.S.C. § 216(b), and Labor Code § 1194(a), Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

[Failure to Pay Overtime Wages – California Labor Code and IWC Wage Order]

49. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through

1 48, inclusive, as though fully set forth herein.

2 50. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with
3 Defendants at all times relevant herein.

4 51. Labor Code § 1198 and the IWC Wage Order § 3 (A) and (B) mandate that domestic
5 service "live-in" employees shall not be employed more than nine hours in any workday for the first
6 five workdays in any week unless they receive additional compensation beyond their regular wages
7 in amounts specified by law. Such employees are entitled to overtime pay at not less than one and
8 one-half times the employee's regular rate of pay for all hours worked in excess of nine during the
9 first five workdays, or for the first nine hours on the sixth and seventh day of work in a workweek.
10 For the remaining hours worked in excess of nine hours on the sixth and seventh days of the
11 workweek, such employees are entitled to be paid double the employee's regular rate of pay.

12 52. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage that
13 failed to compensate her at one and one-half times her regular rate of pay for her hours worked in
14 excess of nine hours per day during her first five workdays, or for her first nine hours on her sixth
15 and seventh consecutive days in a workweek. Defendants also failed to pay Plaintiff at double her
16 regular rate of pay for all hours worked in excess of nine hours on the sixth and seventh days of the
17 workweek. Defendants' denial of overtime and double time compensation to Plaintiff violated the
18 Labor Code and the IWC Wage Order, as set forth herein.

19 53. Under Labor Code § 1194(a), Plaintiff is entitled to recover her unpaid overtime and
20 double time compensation, including interest thereon, in amounts to be proven at trial.

21 54. Under Labor Code § 1194(a), Plaintiff is also entitled to recover reasonable attorneys'
22 fees and costs.

23 **THIRD CLAIM FOR RELIEF**

24 **[Failure to Provide Meal Periods – California Labor Code and IWC Wage Order]**

25 55. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
26 54, inclusive, as though fully set forth herein.

27 56. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with
28 Defendants at all times relevant herein.

57. Labor Code § 512(a) and the IWC Wage Order § 11(A) and (B) require that employers not employ any person for a work period of more than five hours without providing a meal period of not less than 30 minutes, or for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes.

58. Under Labor Code § 226.7(b) and the IWC Wage Order § 11(D), an employer who fails to provide an employee with a meal period in accordance with IWC Wage Order § 11(A) and (B) is liable to the employee for premium pay equal to one hour's pay for each day that the employer failed to provide any required meal period.

59. At all times relevant herein, Defendants routinely employed Plaintiff for a work period of more than ten hours per day without providing Plaintiff with two meal periods of not less than thirty minutes and thereby violated the Labor Code and the IWC Wage Order as set forth herein.

60. Pursuant to Labor Code § 226.7(b), Plaintiff is entitled to recover compensation, plus interest thereon, in amounts to be proven at trial, for Defendants' failure to provide meal periods.

61. Pursuant to Labor Code § 218.5, Plaintiff is also entitled to attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF

[Failure to Provide Rest Periods – California Labor Code and IWC Wage Order]

62. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 61, inclusive, as though fully set forth herein.

63. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with Defendants at all times relevant herein.

64. Section 12(A) of the IWC Wage Order requires that employers authorize and permit all non-exempt employees to take rest periods, at the rate of ten minutes net rest time for every four hours or major fraction of four hours worked.

65. Under Labor Code § 226.7(b) and the IWC Wage Order § 12(B), an employer who fails to authorize or permit any required rest period is liable to the employee for premium pay equal to one hour's pay for each day that the employer failed to provide the rest period.

66. At all times relevant herein, Defendants routinely failed to authorize or permit Plaintiff to take rest periods as required by law and thereby violated the Labor Code and the IWC

1 Wage Order, as set forth herein.

2 67. Pursuant to Labor Code § 226.7(b), Plaintiff is entitled to recover compensation, plus
3 interest thereon, in amounts to be proven at trial, for Defendants' failure to provide rest breaks.

4 68. In addition, Plaintiff is entitled to attorneys' fees and costs pursuant to Labor Code §
5 218.5.

6 **FIFTH CLAIM FOR RELIEF**

7 **[Failure to Furnish Wage and Hour Statements – California Labor Code]**

8 69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
9 68, inclusive, as though fully set forth herein.

10 70. The Labor Code applied to Plaintiff's employment with Defendants at all times
11 relevant herein.

12 71. Labor Code § 226(a) requires that employers furnish each employee with an
13 itemized statement for each pay period showing, *inter alia*, total hours worked, all applicable hourly
14 rates in effect during the pay period, and the corresponding number of hours worked at each hourly
15 rate by the employee.

16 72. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and
17 intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the
18 greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and
19 \$100.00 per employee for each violation thereafter, not exceeding an aggregate penalty of \$4,000.00.

20 73. At all times relevant herein, Defendants routinely failed to provide Plaintiff with
21 accurate itemized wage statements showing, *inter alia*, her total hours worked, all applicable hourly
22 rates in effect during the pay period, and the corresponding number of hours worked at each hourly
23 rate by the employee. As a result, Defendants violated the Labor Code, as set forth herein.

24 74. As part of Defendants' failure to provide Plaintiff with the foregoing information,
25 Plaintiff was not paid according to the law and was hindered in determining the amount of wages
26 actually owed to her by Defendants and in challenging her rate of pay.

27 75. Pursuant to Labor Code § 226(e), Plaintiff is entitled to the greater of actual damages
28 or penalties, in an amount to be proven at trial, plus attorneys' fees and costs.

SIXTH CLAIM FOR RELIEF

[Waiting Time Penalties – California Labor Code]

76. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 75, inclusive, as though fully set forth herein.

77. Labor Code § 201 mandates that employers pay their employees all earned wages immediately upon discharge. Furthermore, Labor Code § 203 authorizes an employee to recover penalties in an amount equal to the employee's wages for up to thirty days if an employer willfully fails to pay any wages earned and due to the employee at the time of the employee's separation from such employment.

78. Defendants fired Plaintiff on or around September 11, 2006.

79. At all relevant times, Defendants willfully failed to pay Plaintiff all minimum, overtime, and double time wages due as set forth in the Labor Code and the IWC Wage Order. At all relevant times, Defendants willfully failed to provide Plaintiff with statutory compensation for missed meal and rest breaks as required by the Labor Code and the IWC Wage Order. Defendants willfully failed to pay Plaintiff all wages owed to her immediately upon her discharge, and such earned wages remain unpaid, in violation of the Labor Code as set forth herein.

80. Since her termination, Plaintiff has demanded that Defendants pay her owed wages. Defendants have refused and continue to refuse Plaintiff's demand.

81. Pursuant to Labor Code § 203, Plaintiff is entitled to waiting time penalties in an amount equal to 30 days' wages, to be proven at trial.

SEVENTH CLAIM FOR RELIEF

[Unlawful and Unfair Business Practices – Cal. Business & Professions Code § 17200]

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, inclusive, as though fully set forth herein.

83. Plaintiff brings this cause of action in her individual capacity pursuant to California Business and Professions Code §§17200 *et seq.*

84. The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and deleterious to Plaintiff and to the general public.

1 85. Section 2 of the FLSA, 29 U.S.C. § 202, and Labor Code § 90.5(a) articulate the
2 federal and state public policy to vigorously enforce minimum labor standards, to ensure that
3 employees are not required or permitted to work under substandard and unlawful conditions, and to
4 protect employers who comply with the law from those who attempt to gain competitive advantage
5 at the expense of their workers by failing to comply with minimum labor standards.

6 86. Defendants have committed unlawful and/or unfair business practices, including but
7 not limited to the following:

- 8 (a) Failure to pay minimum wage for all hours worked, in violation of § 6 of the FLSA,
9 29 U.S.C. § 206, Labor Code § 1197, and the IWC Wage Order § 4;
10 (b) Failure to pay overtime and double time premiums, in violation of Labor Code § 1198
11 and the IWC Wage Order § 3 (A) and (B);
12 (c) Failure to provide meal periods in violation of Labor Code §§ 512 and 226.7, and the
13 IWC Wage Order § 11;
14 (d) Failure to provide rest periods in violation of Labor Code § 226.7 and the IWC Wage
15 Order § 12;
16 (e) Failure to furnish accurate and complete itemized wage statements for each pay
17 period in violation of Labor Code § 226; and
18 (f) Failure to promptly pay wages owed at discharge, in violation of Labor Code § 201.

19 87. Through the conduct alleged herein, Defendants have acted contrary to the FLSA, the
20 Labor Code, and public policy, and have thus engaged in unlawful and/or unfair business practices in
21 violation of Business and Professions Code §§ 17200 *et seq.*, depriving Plaintiff, all persons
22 similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all
23 employees under the law. As a result, Defendants have been unjustly enriched.

24 88. Defendants' unlawful and/or unfair acts have resulted in Plaintiff's injuries. As a
25 direct and proximate result of Defendants' unlawful and/or unfair business acts and practices,
26 Defendants have received and continue to maintain possession of funds that rightfully belong to
27 Plaintiff.
28

1 89. The victims of these unfair and unlawful business practices include, but are not
2 limited to, Plaintiff and the general public. Plaintiff is informed and believes and thereupon alleges
3 that Defendants performed the above-mentioned acts to gain an unfair competitive advantage,
4 thereby injuring Plaintiff and the general public.

5 90. Business and Professions Code §17203 provides that the Court may restore to an
6 aggrieved party any money or property acquired by means of unlawful or unfair business practices.
7 Therefore, Plaintiff requests restitution of all wages and compensation wrongfully retained by
8 Defendants in violation of the FLSA, the Labor Code, and the IWC Wage Order, as enumerated
9 herein.

10 91. Furthermore, Plaintiff requests attorneys' fees and costs pursuant to California Code
11 of Civil Procedure § 1021.5 upon proof that Plaintiff has sought to enforce important rights affecting
12 the public interest. All remedies are cumulative pursuant to Business and Professions Code § 17205.

13 **DECLARATORY RELIEF ALLEGATIONS**

14 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
15 91, inclusive, as though fully set forth herein.

16 93. A present and actual controversy exists between Plaintiff and Defendants concerning
17 their rights and respective duties. Plaintiff contends that Defendants violated her rights under the
18 FLSA, the Labor Code, and the IWC Wage Order. Plaintiff also contends that Defendants violated
19 California's laws against unfair and unlawful business practices, and that the general public has been
20 thereby injured. Plaintiff is informed and believes, and thereon alleges, that Defendants deny these
21 allegations. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties.
22 Declaratory relief is therefore necessary and appropriate.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendants
25 as follows:
26

- 27 1. Declaratory relief, according to proof;
28

2. Unpaid minimum wages, according to proof;
3. Unpaid overtime and double time premiums, according to proof;
4. Unpaid compensation for failure to provide meal periods, according to proof;
5. Unpaid compensation for failure to provide rest breaks, according to proof;
6. Restitution of unpaid compensation, according to proof;
7. Liquidated damages under 29 U.S.C. § 216(b) and Labor Code § 1194.2(a), in an amount equal to wages unlawfully unpaid;
8. Statutory damages under Labor Code § 226(e) for failure to provide itemized pay statements, according to proof;
9. Waiting time penalties under Labor Code § 203 for failure to pay wages due upon separation, according to proof;
10. General, compensatory, and special damages, according to proof;
11. Interest accrued on Plaintiff's damages, including pre- and post-judgment interest, and an upward adjustment for inflation, under Labor Code §§ 1194 and 1194.2 (a) and Cal. Civ. Code § 3287;
12. Reasonable attorneys' fees and costs of suit pursuant to 29 U.S.C. § 216 (b), Labor Code §§ 218.5, 226 (e), and 1194 (a), Cal. Code of Civ. Proc. §1021.5, and other laws; and
13. Such other and further relief as this Court deems just and proper.

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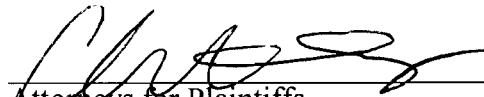
1 Dated: March 13, 2008

Respectfully submitted,

2 Christina Chung
3 Matthew Goldberg
4 Carole Vigne
THE LEGAL AID SOCIETY –
EMPLOYMENT LAW CENTER

5 Hillary Ronen
6 Rocio Avila
7 LA RAZA CENTRO LEGAL

8 By:


Attorneys for Plaintiffs

9
10
11 **JURY TRIAL DEMAND**

12 Plaintiff hereby demands a jury trial as provided by Rule 38 (a) of the Federal Rules of Civil
13 Procedure.

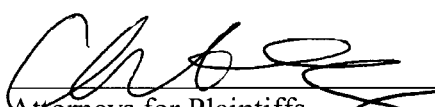
14
15 Dated: March 13, 2008

Respectfully submitted,

16 Christina Chung
17 Matthew Goldberg
18 Carole Vigne
19 THE LEGAL AID SOCIETY –
EMPLOYMENT LAW CENTER

20 Hillary Ronen
21 Rocio Avila
22 LA RAZA CENTRO LEGAL

23 By:

24 
Attorneys for Plaintiffs

CONSENT OF INDIVIDUAL EMPLOYEE
TO BECOME PARTY PLAINTIFF IN ACTION
UNDER § 16(b) OF FAIR LABOR STANDARDS ACT
[29 U.S.C. § 216]

To: The Clerk of the Court and to each Party
and to Counsel of record

I, **Vilma Serralta**, hereby consent to become a party plaintiff in the lawsuit entitled: *Serralta v. Sakhawat Khan and Roomy Khan*

Dated: 3-7-2008

Vilma M Serralta
Signature

VILMA MSERRALTA
Print Name

DECLARATION OF TRANSLATOR

I, Carole Vigne, declare that I have translated the above document from English to Spanish for **Vilma Serralta** and witnessed her signature thereon.

Dated: 03/07/2008

Carole Vigne
Signature